

**UNITED STATES DEPARTMENT OF JUSTICE  
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW  
OFFICE OF THE CHIEF ADMINISTRATIVE HEARING OFFICER**

UNITED STATES OF AMERICA,	)	
Complainant,	)	8 U.S.C. § 1324c Proceeding
	)	
v.	)	OCAHO Case No. 97C00099
	)	
IGNACIO R. SALAZAR,	)	Judge Robert L. Barton, Jr.
Respondent.	)	
	)	

**DECISION AND ORDER**

*(January 28, 1998)*

**I. BACKGROUND AND PROCEDURAL HISTORY**

On April 28, 1997, Complainant filed a two count complaint against Respondent. Count I of the Complaint alleges that, on or after November 29, 1990, Respondent knowingly forged, counterfeited, altered, and falsely made an I-94 form, dated June 3, 1994, in the name of Gloria Alfaro-Abad for the purpose of satisfying a requirement of the Immigration and Nationality Act (INA). Compl.<sup>1</sup> ¶¶ I.A-D. In Count II, Complainant alleges that Respondent possessed or provided the I-94 form, dated June 3, 1994, in the name of Gloria Alfaro-Abad, knowing that the document was forged, counterfeited, altered or falsely made. *Id.* ¶¶ II.A-D.

After receiving Respondent's counsel Eduardo Jaime's motion to withdraw, and having been informed by Respondent that he did not object to the motion and, in fact, that he had secured other counsel, the Court granted the motion to withdraw. Subsequently, on June 4, 1997, Respondent's counsel Stephen Goldsmith filed an Answer to the Complaint containing a general denial. After receiving Respondent's Answer, a telephone prehearing conference was scheduled with the parties, and a written notice of said conference was transmitted to counsel for the parties. Despite being duly notified by telephone and in writing, Respondent's counsel failed to appear for the conference. I then

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<sup>1</sup> The following abbreviations are used in this Decision and Order:

Compl.	Complainant's Complaint, filed April 28, 1997
SCO	Show Cause Order, issued August 1, 1997
Sanctions Order	Order Imposing Sanctions but Denying Complainant's Motion for Default Judgment, issued August 20, 1997
CX	Complainant's exhibit

issued a SCO requiring Respondent's counsel to explain why he had failed to appear for the conference. Complainant subsequently filed a motion for default judgment based on Respondent's failure to comply with the Judge's order to appear at the conference. For reasons that are explicated in my August 20, 1997, Order Imposing Sanctions (Sanctions Order), I denied Complainant's motion for default judgment, but barred Respondent's counsel from any further participation in this proceeding, not only because he failed to show good cause for failing to attend the conference, but also because of his misrepresentations to the Court in his response to the SCO. Mr. Salazar was advised in the Sanctions Order that he could secure the services of another attorney to represent him or that he could represent himself. However, despite the fact that Respondent has been given several months to secure other counsel, no attorney has entered an appearance for him.

Meanwhile, Complainant propounded various discovery requests to Respondent that he apparently did not answer. Commencing on September 19, 1997, Complainant filed three motions seeking to compel answers to the discovery requests.<sup>2</sup> Although Respondent has not responded to those motions, on October 6, 1997, Complainant served a Motion for Summary Decision and requested that I defer ruling on the discovery motions until after I had issued a ruling on the summary decision motion. In support of the Motion for Summary Decision, Complainant offered an array of extrinsic evidence, including a photocopy of the I-94 form in question, Alfaro's record of deportable alien, a record of a sworn statement given by Alfaro, a photocopy of an employment eligibility verification form (I-9 form) for Alfaro, various INS memoranda regarding the investigation of Respondent, two memoranda authored by Respondent, photocopies of INS regulations and operations instructions regarding the authority to parole aliens into the United States, a copy of the transcript from Respondent's Merit Systems Protection Board hearing,<sup>3</sup> and a copy of Respondent's responses to Complainant's Request for Admissions.

Complainant contends that there are no genuine issues of material fact, and that the extrinsic evidence offered in support of Complainant's Motion demonstrates that Respondent committed the two violations alleged in the Complaint. Moreover, with respect to the civil money penalty, although there are no statutory or regulatory criteria for assessment and adjudication of the civil money penalty for violating section 274C of the INA, Complainant argues that the maximum civil money

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<sup>2</sup> Complainant's Motion to Compel (Answers to Complainant's First Request for Production of Documents), filed September 19, 1997; Complainant's Motion to Compel Respondent to Provide Answers to Complainant's Second Request for Admissions-Genuineness of Documents, filed September 23, 1997; and Complainant's Motion to Compel Respondent to Answer Complainant's First Set of Interrogatories, filed September 29, 1997.

<sup>3</sup> Respondent is a former Special Operations Immigration Inspector who was employed by the INS at the Laredo, Texas, port of entry. See CX-X-3 (CX-X is a copy of Respondent's responses to Complainant's Request for Admissions). Respondent was terminated from his employment for the alleged issuance of the I-94 form at issue in this case, and he appealed to the Merit Systems Protection Board (MSPB). See CX-W-4 (CX-W is a copy of the transcript from Respondent's MSPB hearing).

penalty should be assessed in this case. Respondent, however, has failed to respond to the Motion for Summary Decision. After the initial deadline for filing a response had passed, I ordered Respondent on November 6, 1997, to respond to Complainant's Motion by November 20, 1997; Respondent still has not filed a response, despite my express order to do so.

## II. ABANDONMENT

Over the course of the last several months, Complainant has served Respondent with several types of discovery, which Respondent has not answered. Subsequently, Complainant filed three motions to compel, and Respondent has failed to file responses to any of those motions. Moreover, Respondent has failed to respond to Complainant's Motion for Summary Decision despite being expressly ordered to do so. On November 6, 1997, Respondent was ordered to file a response to the Motion for Summary Decision not later than November 20, 1997. He further was advised in that Order that if he failed to comply with the Order, I might construe Respondent's failure to respond to the Motion for Summary Decision as a de facto abandonment of his request for hearing and enter judgment for Complainant. He was directed to contact my office if he had any questions about the Order. However, Respondent has neither filed an answer to the Motion nor responded in any way to my November 6 Order. Moreover, he has failed to respond to telephone messages left at his home to contact the Court so that a telephone prehearing conference could be held on the Motion for Summary Decision.<sup>4</sup>

The OCAHO Rules of Practice provide, in pertinent part, that a request for hearing may be dismissed upon its abandonment by the party who filed it, and that a party shall be deemed to have abandoned a request for hearing if he fails to respond to orders issued by the Administrative Law Judge. See 28 C.F.R. § 68.37(b)(1) (1997). Past OCAHO cases have found abandonment when the party disobeyed or failed to respond to a judge's order. See United States v. Ortiz, OCAHO Case No. 96C00024 (January 23, 1997), 1997 WL 602707 (Order Granting Complainant's Motion to Dismiss and Entering Final Order of Dismissal); United States v. Aquino, 5 OCAHO 746, 747-48 (Ref. No. 818) (1995), 1995 WL 813126, at \*1-2; United States v. Rodeo Night Club, 5 OCAHO 695, 697 (Ref. No. 812) (1995), 1995 WL 813236, at \*2; United States v. Hosung Cleaning Corp., 4 OCAHO 776, 777-78 (Ref. No. 681) (1994), 1994 WL 645787, at \*1-2; United States v. Diamond Constr., 3 OCAHO 577, 580 (Ref. No. 451) (1992), 1992 WL 535607, at \*3. Considering Respondent's lack of any response to my November 6 Order despite being warned of the consequences of failing to respond, as well as Respondent's failure to respond to discovery requests or motions and his failure to return telephone messages, I find that Respondent has abandoned his request for hearing.

"OCAHO case law demonstrates that failure to respond to an order triggers a judgment of default, equivalent to dismissal of the [respondent]'s request for hearing, against [a respondent] who fails to respond to the invitation of such an order." Rodeo Night Club, 5 OCAHO at 697, 1995 WL

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<sup>4</sup> By failing to respond to the written Motion or the oral inquiries, Respondent has neglected his responsibility to refute the evidence offered in support of the Motion for Summary Decision.

813236, at \*1. Accordingly, I find that Respondent is in default for failing to respond to my above-noted order, and I enter judgment for Complainant.

### **III. CONCLUSION**

Based on the foregoing and pursuant to 28 C.F.R. § 68.37(b)(1), I find that Respondent has abandoned his request for hearing, and I enter judgment for Complainant. I find that Respondent has violated sections 274C(a)(1) and (a)(2) of the Immigration and Nationality Act, 8 U.S.C. §§ 1324c(a)(1) and (a)(2), as charged in the Complaint. Respondent is ordered to pay a civil money penalty in the amount of \$4,000, as requested in the Complaint, and to cease and desist from violating sections 274C(a)(1) and (a)(2) of the INA, 8 U.S.C. §§ 1324c(a)(1) and (a)(2). In light of the outcome reached in this Decision and Order, I do not need to address Complainant's outstanding motions, including its Motion for Summary Decision and its three motions to compel responses to discovery requests.

Pursuant to the Rules of Practice, 28 C.F.R. § 68.53(a)(1), a party may file with the Chief Administrative Hearing Officer (CAHO) a written request for review, with supporting arguments, by mailing the same to the CAHO at the Office of the Chief Administrative Hearing Officer, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2519, Falls Church, Virginia 22041. The request for review must be filed within 30 days of the date of the decision and order. The CAHO also may review the decision of the Administrative Law Judge on his own initiative. The decision issued by the Administrative Law Judge shall become the final order of the Attorney General of the United States unless, within 30 days of the date of the decision and order, the CAHO modifies or vacates the decision and order. See 8 U.S.C. § 1324c(d)(4); 28 C.F.R. § 68.53(a).

Regardless of whether a party appeals this decision to the Chief Administrative Hearing Officer, a person or entity adversely affected by a final order issued by the Administrative Law Judge or the CAHO may, within 45 days after the date of the Attorney General's final agency decision and order, file a petition in the United States Court of Appeals for the appropriate circuit for the review of the final decision and order. A party's failure to request review by the CAHO shall not prevent a party from seeking judicial review in the appropriate circuit's Court of Appeals. See 8 U.S.C. § 1324c(d)(5); 28 C.F.R. § 68.53(a)(3).

SO ORDERED.

Dated and entered this 28th day of January, 1998.

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**ROBERT L. BARTON, JR.**  
**ADMINISTRATIVE LAW JUDGE**

**CERTIFICATE OF SERVICE**

I hereby certify that on this 28th day of January, 1998, I have served the foregoing Decision and Order on the following persons, by first class mail (unless otherwise indicated), at the addresses indicated:

Robert M. Lewandowski  
Sector Counsel  
United States Border Patrol  
207 W. Del Mar Blvd.  
Laredo, TX 78041  
(Counsel for Complainant)

Ignacio R. Salazar  
222 Sunset Loop  
Laredo, TX 78043  
(Respondent)

Dea Carpenter  
Associate General Counsel  
Immigration and Naturalization Service  
425 "I" Street, N.W., Room 6100  
Washington, D.C. 20536

Office of the Chief Administrative Hearing Officer  
Skyline Tower Building  
5107 Leesburg Pike, Suite 2519  
Falls Church, Virginia 22041  
(Hand Delivered)

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Laura Conner  
Attorney Advisor to Robert L. Barton, Jr.  
Administrative Law Judge  
Office of the Chief Administrative  
Hearing Officer  
5107 Leesburg Pike, Suite 1905  
Falls Church, VA 22041  
Telephone No.: (703) 305-1739  
FAX No.: (703) 305-1515